App. F. IX-4

Previous References.

194 /

C/-

File No. 118-41

Serial Nos. 1-2

Later References.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. two only

Part B for Nov '4

SUBJECT.

Amendment to Rule 23 of Order XLI of the Code of Civil Procedure

Order No P 2420 D 29. N. 1941

To

Registrar H.C.

Accords Sanction to the proposed Amendment under Sec. 126 C.P.C.

C. G. Vajravelu
4.3.42

2411

G. R. S. APP. F. III—1]

GENERAL AND REVENUE SECRETARIAT.

(Cls)

NOTES. Cls File No.

FILE HEADING.

Amendment to Rule 23 of Order XLI of the Code of Civil Procedure

FROM

The Registrar. High Court

Roc No. 261/ CO-41 Dated 1/3-11-41 Received 3-11-41

Diary No. 2411	Encls. 1	Spare copies	Serial No. 1

BRIEF ABSTRACT OF LETTER

Requests that sanction may be accorded to the amendment proposed under Sec. 126 of the Code.

NOTES AND ORDERS.

Subd with a draft G.O. sanctioning
Put up a typed copy of Rule 23
as it is now. The Es. should be received typed
5/11/41

Subd with a typed copy of the original rule (before amendment) 3 5/11/41

Hon I - is Rule 23 as it is, &
Hon M - is the Rule as amended
The G.O. may be approved

Law Secretary
May be approved 3 6/11/41
Minister for Law.
Hon 7.11.41.

3 8/11/41

OFFICE OF THE MINISTER FOR LAW
NOV 8 1941
No. 4466

NOTES—First Sheet

WD 077—GPB—5,000—11-9-40

24

'25 File No. 118 of 194/ . | General and Revenue Secretariat

To the Registrar High Court No P 2420 of 29-11-41 Sanctions the amendments as appended to the order	2	B

1-3 X

2411 941

R. O. C. No. 261/40-41
D. Dis.
Enc: one

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,
Bangalore, 1st November 1941.

FROM

C5 118-41-1

T. SHAMIENGAR, ESQ., B.A., B.L.,
Registrar, High Court of Mysore.

XXX

To

H.V. NARAYANA RAO, Esq., B.A., LL.B.,
Secretary to the Government of Mysore,
Law Department, BANGALORE.

SECY. LAW DEPT. 3 NOV. 1941 GOVT OF MYSORE

3/11/41

I am directed to state that the High Court proposes to amend Rule 23 of Order XLI of the Code of Civil Procedure as shown in the enclosure in accordance with the recommendation of the Rule Committee.

As the rules in Schedule I of the Code of Civil Procedure now stand, an appellate Court can remand a suit under Rule 23 of Order XLI, if the trial Court has wrongly disposed of the suit on a preliminary point, and against such an order of remand an appeal is allowed by Rule 1 (u) of Order XLIII. But in practice suits are often remanded to trial Courts for reasons other than that they have been wrongly decided on a priliminary point, and against such orders of remand the rules provide no appeal, though it is generally recognized that an appeal is often desirable. Against such orders of remand aggrieved parties can only prefer revision petitions, if revision is applicable. The time of the High Court is often wasted by aggrieved parties trying to pursuade the Court that the disposal of the trial Court was on a preliminary point, when that was not strictly so, in order to establish a right of appeal. These difficulties have been experienced in the High Courts of British India, which have adopted different ways of getting over them by amendments of the rules in Schedule 1 of the Code of British India. The High Court now proposes to follow the method adopted some years ago with success and practical convenience by the High Court of Madras-viz. to enlarge the power of remand under Rule 23 of Order XLI so as to

to cover all occasions on which a remand can reasonably be ordered. When that has been done, an appeal against any such remand order except when made by the High Court will lie to the High Court under Rule 1 (u) of Order XLIII.

The proposed amendment has been duly published, but no objection nor suggestion in regard to it has been received.

I am to request that the Government may be pleased to accord sanction to the proposed amendment under Section 126 of the Code.

I have the honour to be,

Sir,

Your most obedient servant,

J. Shanmugam

REGISTRAR.

ks
GRA/-

Appendix

PROPOSED AMENDMENT OF RULE 23 OF ORDER XLI OF THE CODE OF CIVIL PROCEDURE.

In rule 23 of Order XLI of the Code of Civil Procedure, delete the words "if it thinks fit" appearing after the words "the Appellate Court may" and add the following between "reversed in appeal" and "the Appellate Court may" --

"or, where the Appellate Court, in reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case".

The Rule, after amendment, will run as follows:-

Remand of case by Appellate Court.

23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, or, where the Appellate Court, in reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case, the Appellate Court may by Order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred with directions to readmit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

J. Shamanger
REGISTRAR.

HRG.

Original Section (proposed to be amended)

CIVIL PROCEDURE CODE REGN. III of 1911.

Remand of case by Appellate Court.

23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, [if it thinks fit] by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

omit the words in brackets [ ]

add — "or where the Appellate Court, in reversing or setting aside the decree appealed against, considers it necessary in the interests of justice to remand the case"

dlc

G. R. S. App. F VI—G 2]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *193*

Section. C/5

File No. 118-41

Serial No. 2

Proceedings of the Government of His Highness the Maharaja of Mysore.

Date of issue ..... 29/11/.... 1941.

Signed by ..... Sd. M.K.V.

Read—

Letter No.R.O.C.261/40-41 dated 1/3rd November 1941 from the Registrar, High Court of Mysore, stating that under Rule 23 of Order XLI of Schedule I of the ~~Criminal~~ Civil Procedure Code, as it stands an appellate court can remand a suit if the Court has wrongly ~~in~~ disposed of the suit on a preliminary point and against such an order of remand an appeal is allowed, but, in practice, suits are often remanded to trial courts for reasons other than that they have been wrongly decided on a preliminary point and against such orders of remand the rules provide no appeal, though it

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

it is generally recognised that an appeal ~~xxxxxxxxxxxxxx~~ is often desirable, and thereby ~~that~~ this gives rise to difficulties and requesting, in the circumstances, sanction under Sec. 126 C.P.C. to amend Rule 23 of Order XLI of the Code of Civil Procedure, enlarging the power of remand of trial of a suit, so as to cover all occasions on which a remand can reasonably be ordered, & authority has

(ORDER No. P.) &

(Dated, Bangalore, the Novr. 41.)

The proposed amendment recommended by the Rule Committee was duly published, and no objection or suggestion was received.

Order No Para. Dated Bangalore, the 29th Nov 41.

Government are pleased to accord sanction to the amendment, which is appended to this order.

2.11.41.

Secretary to Government,
Law Department.

To
The Registrar, High Court of Mysore.

List of Enclosure

TN)

Copied by

Examined by

WD 0564—GPB—22,500—9-1-39

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE

Read:-

Letter No.R.O.C.261/40-41 dated 1/3rd November 1941 from the Registrar, High Court of Mysore, stating that under Rule 23 of Order XLI of Schedule I of the Civil Procedure Code, as it stands, an appellate court can remand a suit if the Court has wrongly disposed of the suit on a preliminary point and against such an order of remand an appeal is allowed, but, in practice, suits are often remanded to trial courts for reasons other than that they have been wrongly decided on a preliminary point and against such orders of remand the rules provide no appeal, though it is generally recognised that an appeal is often desirable and that this gives rise to difficulties and requesting, in the circumstances, sanction under Section 126 Civil Procedure Code to amend Rule 23 of Order XLI of the Code of Civil Procedure, enlarging the power of remand of trial of a suit, so as to cover all occasions on which a remand can reasonably be ordered and intimating that the proposed amendment recommended by the Rule Committee was duly published, and no objection or suggestion was received.

O R D E R No.P. 2420/CS 118-41-2

Dated, Bangalore, the 29th November 1941.

Government are pleased to accord sanction to the amendment, which is appended to this Order.

M.K. Haradara Gupta
For Secretary to Government.
Law Department.

To--The Registrar, High Court of Mysore.

TN-20

APPENDIX.

Amendment of Rule 23 of Order XLI of the Code of Civil Procedure.

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The Rule, after amendment, will run as follows:-

23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, or, where the Appellate Court, in reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case, the Appellate Court may by Order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred with directions to readmit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Remand of case by Appellate Court.

M. K. Haradasa Iyer
For Secretary to Government.
Law Department.